

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of Lamar Lee,)	
Petitioner)	
And)	CAUSE NO. 061102-49
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Open Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is an 18-year-old senior (d/o/b November 10, 1988) currently attending Jefferson High School, a public high school located in the Lafayette School Corporation (LSC). He attended McCutcheon High School in the Tippecanoe School Corporation (TSC) during his freshman, sophomore, and junior years and participated on the varsity basketball team during all three seasons. Petitioner's mother had previously rented a home located in the attendance area of the Tippecanoe School Corporation. During the summer of 2006, her lease was coming to an end, and she decided to buy a home. She eventually purchased a home in the attendance area of the LSC. Petitioner does not have a car or a driver's license. Because of difficulties in providing transportation to a school outside of his school corporation of legal settlement, Petitioner's mother enrolled him at Jefferson High School for his senior year.

Petitioner's mother completed the IHSAA Transfer Report on August 3, 2006, indicating that she had moved into the LSC and was seeking full eligibility under **Rule C-19-5**.¹ As the receiving school, Jefferson recommended full eligibility under **Rule C-19-5**, indicating that Petitioner's mother had purchased a new home. On August 25, 2006, the sending school, McCutcheon High School,

¹ Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are "common" to all potential athletes and, hence, begin with "C." (All references are to the 2006-2007 by-laws of Respondent.) The Transfer Rule provides, in pertinent part:

C-19-5

TRANSFER ELIGIBILITY WITH CHANGE OF RESIDENCE BY PARENT(S)/GUARDIAN(S)

A student who transfers with a corresponding change of residence to a new district or territory by the student's custodial parent(s)/guardian(s) may be declared immediately eligible, provided there is a bona fide change of residence.

Respondent's by-laws provide the following definition: **Bona fide change of residence** - Determination of what constitutes a 'bona fide' change of residence depends upon the facts in each case, however, to be considered, the following facts **must** exist:

- a. the original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by **any** member of the student's immediate family; and
- b. the student's entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.
- c. the change of residence must be genuine, without fraud or deceit, and with permanent intent.

recommended Petitioner be determined ineligible to play pursuant to **Rule C-19-4**² and indicated that an investigation should be made. On September 25, 2006, after an investigation, Respondent's Commissioner determined that Petitioner was athletically ineligible at Lafayette Jefferson for 365 days from the time of his transfer, pursuant to rule **Rule C-19-4**.

On September 29, 2006, Petitioner sought review of the Commissioner's decision by Respondent's Review Committee. The Review Committee conducted its review on October 19, 2006 and issued its decision on October 30, 2006, upholding the Commissioner's decision declaring Petitioner ineligible to participate in interscholastic athletics for 365 days from his enrollment.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel³ on November 2, 2006. Petitioner requested the hearing be open to the public. On November 3, 2006, the parties were notified of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. Hearing was set for November 21, 2006, in the offices of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On November 21, 2006, the CRP convened.⁴ The Petitioner appeared and was represented counsel. The Respondent appeared by counsel. Prior to the hearing, Petitioner and Respondent each submitted one exhibit. No objections were made to the exhibits.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

² **Rule C-19-4** provides in part: To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school 'jumping' for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school . . .

Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

³ The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

⁴ Six members were present: Joan L. Keller, Chair; Christi L. Bastnagel; Scott F. Eales; James Perkins, Jr.; Stephen Psikula; and Earl H. Smith, Jr.

FINDINGS OF FACT

1. Petitioner is an eighteen-year-old senior (d/o/b November 10, 1988) currently attending Jefferson High School, a public high school located in the Lafayette School Corporation.
2. Petitioner attended McCutcheon High School in the Tippecanoe School Corporation during his freshman, sophomore, and junior years and was a starter on the varsity basketball team during all three seasons.
3. Throughout his first three years in high school, Petitioner resided with his mother within the attendance area of the Tippecanoe School Corporation. Petitioner's mother rented a duplex. Her last lease was a one-year lease that expired on August 31, 2006.
4. Petitioner's mother did not wish to renew her lease, and, in any event, did not believe her landlord would renew the lease. She sought to purchase a home in the TSC with the intention that Petitioner would continue to attend McCutcheon High School.
5. Petitioner's mother was unable to find a home within the McCutcheon attendance area that she could afford and obtain 100% financing.⁵ The home she was able to afford was located in the Lafayette School Corporation. She purchased this home on June 30, 2006, while Petitioner was in Las Vegas attending an AAU basketball tournament.
6. Petitioner's mother was unable to afford a car and insurance for Petitioner to enable him to drive to McCutcheon. McCutcheon's school bus did not pick up students near Petitioner's new home, and the use of public transportation would not get Petitioner to McCutcheon or to a McCutcheon school bus stop in time for Petitioner to ride a school bus.
7. Although Petitioner's mother expressed her intent that Petitioner continue to attend McCutcheon High School, she ultimately enrolled him at Jefferson High School on or about August 3, 2006.
8. Throughout his high school basketball career, Petitioner expressed a certain amount of criticism of the style of play of McCutcheon and the schedule McCutcheon played. The criticism became more pronounced during the past year as he criticized the slow style of play of McCutcheon and urged his coach to play in Jefferson's up-tempo style. Petitioner stated that Jefferson's style of play would showcase his abilities as a basketball player. Petitioner was also critical of the schedule McCutcheon played and complained that it was not as challenging as that played by Jefferson.
9. In January, 2006, Petitioner hurt his ankle and was unable to play for a game. When he returned, the point guard that played when Petitioner was injured was given the starting spot for that game. Petitioner did play in that game, but not well and not for as many minutes as Petitioner would have liked. Petitioner did not attend either practice or the game the next day. He attended a Jefferson game that night instead of playing in McCutcheon's game. He told an assistant coach that he would not be at practice or the game, and that he needed time to decide what he wanted to do.

⁵ She qualified for a mortgage of 80% of the purchase price. Since she did not have the funds for the 20% down payment, she was looking at homes being sold by Gunstra, a builder who would take back a 2nd mortgage for the remaining 20%.

10. Petitioner decided to return to the McCutcheon team. He was permitted to do so after serving a two-game suspension.
11. During the summer basketball season, Petitioner was asked to play the wing position rather than point guard. Petitioner was unhappy with this assignment and resistive to the change in position, at times refusing to follow the coach's direction.
12. Petitioner did not feel that the McCutcheon coach did enough to promote him to colleges.
13. Petitioner was verbally offered a scholarship to Wright State University. Wright State withdrew the offer after the McCutcheon coach indicated that Petitioner was uncoachable and not a team player.
14. There was no evidence that Petitioner was recruited by the coaching staff at Jefferson, or that anyone at Jefferson exerted undue influence over Petitioner to entice him to enroll at Jefferson.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.
2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. **Rule C-19-5** provides that a student *may* be declared immediately eligible if there is a bona fide change of residence of the student's parent. Petitioner's mother vacated the duplex she had been renting. The mother moved the entire household belongings into the new house she purchased. The change of residence is genuine and with permanent intent. The move of Petitioner and his mother is a bona fide change of residence.
4. **Rule C-19-4** provides that student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school. Petitioner preferred the style of basketball that Jefferson played and believed this style was more consistent with his athletic abilities. Petitioner also was unhappy that the McCutcheon coach was asking him to practice or play in the wing position rather than point guard, and at times refused to do so. Such disagreements with coaching decisions, and seeking a team perceived as more consistent with his athletic abilities, are evidence of athletic motivation in the transfer to Jefferson.

5. Petitioner's transfer to Jefferson was primarily for athletic reasons. Although Petitioner's move into the LSC was a bona fide change of residence, the primary motivation for the move into the LSC and the transfer to Jefferson was athletics.

ORDER

Respondent's determination that Petitioner shall be ineligible for 365 days from the date of enrollment at Jefferson is upheld. This was determined by vote of 5-1.

DATE: December 7, 2006

/s/Joan L. Keller, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.